

1 AN ACT relating to long-term care.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 216.535 is amended to read as follows:

4 (1) As used in KRS 216.537 to 216.590:

5 (a) "Long-term care facilities" means those health care facilities in the
6 Commonwealth which are defined by the Cabinet for Health and Family
7 Services to be family care homes, personal care homes, intermediate care
8 facilities, nursing facilities, nursing homes, and intermediate care facilities for
9 individuals with intellectual disabilities;

10 (b) "Cabinet" means the Cabinet for Health and Family Services;

11 (c) "Resident" means any person admitted to a long-term care facility as defined
12 by this section;

13 (d) "Licensee" in the case of a licensee who is an individual means the individual,
14 and in the case of a licensee who is a corporation, partnership, or association
15 means the corporation, partnership, or association;

16 (e) "Secretary" means the secretary of the Cabinet for Health and Family
17 Services;

18 (f) "Long-term care ombudsman" means the person responsible for the operation
19 of a long-term care ombudsman program which investigates and resolves
20 complaints made by or on behalf of residents of long-term care facilities; and

21 (g) "Willful interference" means an intentional, knowing, or purposeful act or
22 omission which hinders or impedes the lawful performance of the duties and
23 responsibilities of the *cabinet, the Office of the Inspector General in the*
24 *cabinet, or the long-term care* ombudsman, as set forth in this chapter.
25 *"Willful interference" includes attempts by representatives of a long-term*
26 *care facility to obstruct the ability of surveyors or investigators to conduct*
27 *private interviews regarding the facility.*

- 1 (2) The following information shall be available upon request of the affected Medicaid
 2 recipient or responsible party:
- 3 (a) Business names, business addresses, and business telephone numbers of
 4 operators and administrators of the facility; and
- 5 (b) Business names, business addresses, and business telephone numbers of staff
 6 physicians and the directors of nursing.
- 7 (3) The following information shall be provided to the nursing facility patient upon
 8 admission:
- 9 (a) Admission and discharge policies of the facility;
- 10 (b) Payment policies relevant to patients for all payor types; and
- 11 (c) Information developed and distributed to the nursing facility by the
 12 Department for Medicaid Services, including but not limited to:
- 13 1. Procedures for implementation of all peer review organizations' reviews
 14 and appeals processes;
- 15 2. Eligibility criteria for the state's Medical Assistance Program, including
 16 circumstances when eligibility may be denied; and
- 17 3. Names and telephone numbers for case managers and all state long term
 18 care ombudsmen.

19 ➔Section 2. KRS 216.541 is amended to read as follows:

- 20 (1) Willful interference, as defined in KRS 216.535, with representatives of ***the***
 21 ***cabinet, the Office of the Inspector General in the Cabinet, or*** the Office of the
 22 Long-Term-Care Ombudsman in the lawful performance of official duties,
 23 ***including duties*** as set forth in the Older Americans Act, 42 U.S.C. secs. 3001 et
 24 seq., shall be unlawful.
- 25 (2) Retaliation and reprisals by a long-term-care facility or other entity against any
 26 employee or resident for having filed a complaint or having provided information to
 27 ***the cabinet, the Office of the Inspector General in the Cabinet, or*** the long-term

1 care ombudsman shall be unlawful.

2 (3) A violation of subsection (1) or (2) of this section shall result in a fine of one
3 hundred dollars (\$100) to five hundred dollars (\$500) for each violation. Each day
4 the violation continues shall constitute a separate violation. The manner in which
5 appeals are presented for violations of this section shall be in accordance with
6 administrative regulations prescribed by the secretary for determining the rights of
7 the parties. All fines collected pursuant to this section shall be used for programs
8 administered by the Department for Aging and Independent Living.

9 (4) **Any representative of or contractor for a licensee who violates subsection (1) or**
10 **(2) of this section shall be guilty of a Class A misdemeanor.**

11 **(5)** The Cabinet for Health and Family Services shall authorize the acquisition of
12 liability insurance for the protection of representatives of the Long-Term-Care
13 Ombudsman Program who are not employed by the state, to ensure compliance with
14 the federal mandate that no representative of the office shall be liable under state
15 law for the good faith performance of official duties.

16 ➔Section 3. KRS 216.545 is amended to read as follows:

17 (1) The cabinet shall prepare a statement of the requirements of KRS 216.537 and
18 216.540 **and the prohibited acts and penalties in Section 2 of this Act,** which shall
19 become part of the public notice required to be posted in each facility in accordance
20 with KRS 216.543.

21 (2) All long-term care facilities shall provide every resident, upon admission, with a
22 personal copy of the statement required in subsection (1) of this section.

23 ➔Section 4. KRS 216.565 is amended to read as follows:

24 In determining the amount of the initial penalty to be imposed under KRS 216.537 to
25 216.590, the cabinet shall consider at least the following factors:

26 (1) The gravity of the violation, including the probability that death or serious physical
27 or mental harm to a resident will result or has resulted; the severity of the actual or

1 potential harm, and the extent to which the provisions of the applicable statutes or
2 regulations were violated;

3 (2) The reasonable diligence exercised by the licensee and efforts to correct violations;

4 (3) The number and type of previous violations committed by the licensee;~~and~~

5 (4) **The number and type, if any, of acts of willful interference committed by**
6 **representatives of the long-term care facility; and**

7 **(5)** The amount of assessment necessary to **ensure**~~insure~~ immediate and continued
8 compliance.

9 ➔Section 5. KRS 216.590 is amended to read as follows:

10 **(1)** The cabinet shall provide training for surveyors and investigators who perform
11 duties related to KRS 216.537 to 216.590.

12 **(2) Surveyor and investigator training shall include specific instruction on:**

13 **(a) Actions and remedies available to the surveyor or investigator regarding**
14 **attempts to impede surveys and investigations; and**

15 **(b) The conditions under which long-term care facility employees may request**
16 **that a supervisor be present for an employee interview.**

17 ➔Section 6. This Act may be cited as the Protection from Nursing Home Abuse
18 Act.